

ORIGINAL

Decision No. 92575 JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHARLES E. and MYRNA BLOMGREN,)
 Complainants,)
 vs.)
 JAMES J. DOWNEY, Owner,)
 KENWOOD VILLAGE WATER COMPANY,)
 Defendant.)

(ECP)
 Case No. 10840
 (Filed March 18, 1980)

Charles Blomgren, for himself and Myrna Blomgren,
 complainants.
John Downey, for James J. Downey, defendant.

INTERIM OPINION

The Pleadings

The complaint alleged that the complainants' water meter was not read for a period of 15 months, and that defendant had overestimated water usage during that period. It also claimed that defendant, by means of false meter readings and overestimates, had charged complainants for water not used. Complainants deposited \$511.96 with the Commission under the disputed bill procedure.

Defendant's answer stated that, "[c]omplainants' contention that subject water meter had not read [sic] for at least 15 months is erroneous, wrong, and untrue; and is denied."

The answer also alleged that the estimates used were based on complainants' previous water consumption, and denied that they were excessive. Defendant specifically denied having cheated complainants, or charging them for water not used.

The Hearing

Hearing was held under the Expedited Complaint Procedure before Administrative Law Judge (ALJ) Gilman on May 27, 1980 in San Francisco. Mr. Blomgren (complainant) stated that his meter was installed in his neighbor's driveway. On June 27, 1978 his neighbor had asphalt covering applied to the driveway. Mr. Blomgren asserted that the meter box was covered with the paving material and that the meter therefore could not be read. He observed that the driveway's surface remained undisturbed from June 27, 1978 until the fall of 1979; he claimed that his neighbor would confirm his observations. Finally, in September 1979, he noticed that the roadway surface had been disturbed in an apparent attempt to locate the meter.

Complainants received monthly water bills in the months of July through December 1978; each stated that the charges were based on an actual meter reading. After December, they received no bill until the end of September 1979. The September bill covered the months of January through August and totaled \$511.96. According to the bill, consumption for January and February was based on meter readings. The monthly consumption for March through August was concededly estimated; however, the total consumption (69,660 cu.ft.) for those months was assertedly based on the difference between an early March and a mid-September reading.

Complainants asserted that they could not possibly have consumed 69,660 cu.ft. in March through mid-September. They argued that the only possible explanation for such a large consumption was

that the September reading was fraudulent. They contended that the meter must have either been tampered with or another meter with a higher cumulative reading substituted for the original.

Defendant's manager claimed that the meter was read monthly up to and including March 1979 by an employee who knew the location of the meter. He presented this employee's declaration under penalty of perjury as a late-filed exhibit. The declaration stated that the meter was read monthly by "removing any dirt/shale covering the box as sometimes required." The manager conceded that after this employee left to take another job in April 1979, the meter became lost and was not relocated or read until September. Once the meter was relocated it was read, a cumulative bill was sent, and the meter box was raised to the level of the pavement. He explained that he did not look for the meter until September because his underground metal detector was broken. He did not explain why no bill was sent in January or February 1979.

The manager calculated the total March through August 1979 consumption by subtracting the employee's last reported reading in early March from the September reading, taken after the meter was rediscovered. He allocated this amount between individual months in proportion to complainants' monthly consumption in prior years. He contended that, regardless of the accuracy of these allocations, complainants owe defendant for 69,660 cu.ft. of water plus the amounts allegedly consumed in January and February, as follows:

1. Past due January 1979 bill	\$ 5.85
2. February consumption - 18,790 cu.ft.	78.46
3. Difference between March and September readings - 69,660 cu.ft.	<u>427.65</u>
	\$511.96

He denied replacing or setting the meter ahead and asserted that the September reading was an accurate accumulation of prior consumption.

Mr. Blomgren also described a meter test performed at his request by defendant. He contends that this test was both unreliable and unlawful since defendant used an uncalibrated test meter. Defendant responded that a comparison of both meters demonstrated the accuracy of complainants' meter. He argued that it would be too burdensome and expensive to require small water utilities to comply fully with General Order No. 103 (G.O. 103) requirements for meter testing.

Post-Hearing Proceedings

During the course of the hearing, the ALJ directed defendant to prepare, serve, and file a late-filed exhibit, explaining how the original meter reader read a covered meter without leaving traces. Mr. Blomgren did not object during the course of the hearing to the use of the late-filed exhibit procedure. Defendant, as required, supplied declarations by this employee; they were accepted into evidence.

Subsequently, a member of the Commission's Utilities Division was assigned to observe and photograph the meter site and paving. This staff member visited the site and prepared a statement and photographs, which described the paving material and other features of the present meter installation. The ALJ provided copies and proposed to enter this document as a further late-filed exhibit.

Defendant objected to the proposal pursuant to Rule 74^{1/}. This document was stricken and is not in evidence.

1/ "Additional Evidence. At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission reserving exhibit numbers therefor." (Emphasis added)

Both parties have proposed that this matter be reopened for additional evidentiary hearing. However, Section 1702.1 of the Public Utilities Code provides that complaints concerning bills of less than \$750 should be handled by a procedure which is quick and inexpensive to the parties and the taxpayer. The Commission has the power to terminate the expedited procedure and commence a conventional hearing only when required by the public interest to do so. Since there has been no claim that further hearing would be of benefit in adjudicating this matter, we will not grant either request.

Mr. Blomgren challenged the credibility of defendant's manager and contended that his statement should have been taken under oath. However, we have determined that Mr. Blomgren has misanalyzed his own case. Defendant's manager did not claim any personal knowledge of whether or how the meter was read in any month up to March 1979; hence his credibility is not material on that issue. The record does contain the declarations, under penalty of perjury, of the only person who claims personal knowledge of such facts. Furthermore, the credibility of defendant's manager is not necessary to the disposition of any other issue, as more fully explained below. Therefore, the informal nature of the hearing did not prejudice complainants.

Mr. Blomgren also claims that it was unfair to accept the declarations of defendant's ex-employee while excluding the observations of the Commission employee. Since we have adopted findings which disregard the declarations, that issue is moot.

Chronology

The material events occurred in the following sequence:

Prior to June 1978	Complainants assumed that their water meter was read regularly.
June 13, 1978	It is undisputed that the cumulative reading was 158,320 cu.ft. on this date.
June 27, 1978	The paving material was applied.
July through December, 1978	Complainants received and paid each monthly bill, purportedly based on beginning and end of period cumulative meter readings.
January 1979 to September 28, 1979	No bills were received.
January 11, February 8, March 9, 1979	According to defendant, the meter was read but no bill was submitted.
April 1979	Defendant's meter reader quit. The new reader could not find the meter.
May 1, 1979	Defendant's rate increase became effective.
March 9 to September 13, 1979	Defendant concedes that meter was unread; he asserts that the cumulative reading on March 9 was 243,640 cu.ft. and on September 13, 313,300 cu.ft.
Mid-September, 1979	Mr. Blomgren noticed that the driveway pavement had been disturbed.
September 28, 1979	The disputed bill was received.
Early October, 1979	Mr. Blomgren told defendant that the dispute would be referred to the Commission.

October 15, 1979	The disputed bill deposit was sent to the Commission.
Mid-October 1979	The meter box was raised to pavement level.
February 1980	The meter accuracy test was performed.

The nature of this proceeding, and the incomplete state of the existing evidentiary record, means that the Expedited Complaint Procedure should be abandoned. The proceeding will be reopened for complainants and defendant to present their evidence with a court reporter present. Also, there are certain things we believe should be addressed at the further hearing.

It would be advantageous to consider the staff member's testimony, as well as any other information the parties may present to help us determine whether the meter was actually read between July 1978 to March 1979.

There is another deficiency in the record. We also wish evidence on the complainants' consumption in 1980 to date. The consumption figures previously presented may not be completely reliable; for example, it appears that consumption in June, July, and August of 1978 may have been estimated. If that is the case, a comparison of these figures with the 1979 estimates will not help us determine whether the 1979 estimates were reasonable.

The parties are encouraged to present other evidence on consumption; for example, records relating to any other customers who have comparable lots and landscaping. Finally we are concerned that we have no reliable evidence concerning meter accuracy.

Defendant's manager tested the meter in complainant's presence using another, uncalibrated meter. Such a test is not

capable of testing accuracy within 0.3 percent and hence does not meet the standards established in G.O. 103.

We cannot agree with defendant's contention that the G.O. 103's meter testing procedures are unreasonably burdensome to small water utilities. Quite the contrary, they allow a high degree of flexibility to meet special circumstances. G.O. 103 provides:

" . . . Where the utility has no proper meter testing facilities available locally, the meter may be tested by a meter manufacturer or its agency, or by any other reliable organization equipped for water meter testing or by the utility's meter testing plant where located in some other community..."

Defendant owns and controls several small water utilities; he could comply with G.O. 103 by establishing one test facility to serve all the systems. Alternatively, these systems could share the costs of a contract with a manufacturer or other qualified tester.

G.O. 103 also provides:

"Each utility furnishing metered water service shall provide the necessary standard facilities, instruments and other equipment for testing its meters in compliance with these rules. Any utility may be excepted from this requirement provided that satisfactory arrangements are made for test of its meters by another utility or agency equipped to test meters in compliance with these rules." (Emphasis added.)

Thus, if none of the specified modes of compliance satisfy a particular utility's needs, G.O. 103 allows it to propose yet another method of testing.^{2/}

^{2/} We will not consider any exemption requests in this proceeding. The rule assumes that even if a special test procedure is approved, it may not be applied retroactively to pending requests for tests.

We have determined that defendant has not responded in a lawful manner to complainant's demand for a meter test. He will be ordered to do so, and to present the results as evidence during the additional hearings.

Findings of Fact

1. Both parties agree that the matter should be reopened.
2. The record is deficient; it should be supplemented with evidence concerning complainants' consumption.
3. The testimony of the staff employee should be considered.
4. It is likely that we will be required to determine credibility issues, and therefore all oral testimony should be under oath and recorded.
5. The meter testing procedure using an uncalibrated meter is not capable of determining whether or not accuracy is within 0.3 percent.

Conclusions of Law

1. The public interest requires that the expedited procedure be terminated.
2. Defendant should be ordered to supply evidence concerning complainants' current consumption.
3. Defendant should be ordered to perform a lawful meter test.
4. To minimize further delay in this proceeding, this order should be made effective the date of signature.

INTERIM ORDER

IT IS ORDERED that:


1. The expedited procedure is terminated and the matter reopened.
2. James J. Downey shall supply evidence concerning complainants' consumption in 1980 up to the date set for hearing;

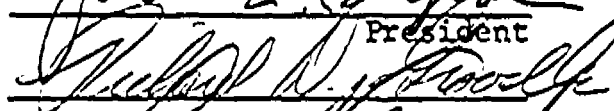
he should present this evidence by a witness who can testify of his own personal knowledge whether each monthly bill was based on an estimate or a reading.

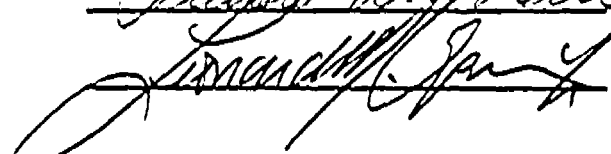
3. James J. Downey shall perform a test of complainants' meter in conformity with General Order No. 103.

The effective date of this order is the date hereof.

Dated JAN 6 1981, at San Francisco, California.



President




Commissioners